



Gambling— Lottery and Riverboats

**Indiana Close Up
A Jefferson Meeting
on the Indiana Constitution**



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Thank you

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The Jefferson Meeting format requires analysis, critical thinking, public speaking, and cooperative work by participants no matter their level of ability. The Meeting links the Constitution with issues currently in the spotlight and has been called a history lesson with a focus on the present and a civics lesson with historical perspective.

The Jefferson Foundation is located at 1529 18th Street, N.W., Washington, D.C. 20036; telephone 202-234-3688.

Availability

Copies of this publication are available from the Indiana Historical Bureau, 140 North Senate Avenue, Room 408, Indianapolis, Indiana 46204-2296. Call for details: 317-232-2535/TDD 317-232-7763/FAX 317-232-3728.

Disclaimer

This issue essay should be used as an educational aid to encourage discussion and study. It is not a complete revelation of the current law. The legal issues referred to are far more complex than we are able to address in this format.

The state should allow gambling.

The Issue

- Constitution of Indiana

Article 15, Section 8. No lottery shall be authorized, nor shall the sale of lottery tickets be allowed. Repealed on November 8, 1988.

Relevant Constitutional References

The U.S. Constitution was ratified in 1787. The first ten amendments, called the Bill of Rights, were ratified in 1791. Most of the original thirteen colonies had bills of rights with their constitutions when they formed the Union. Each new state which entered the Union had a constitution. Indiana's original 1816 constitution included a Bill of Rights of 24 sections in Article I. The 1851 Indiana constitution contains 37 sections in Article I, known as the Bill of Rights, and gives more rights to citizens than the federal Bill of Rights.

Historical Context

The rights enshrined in the U.S. Bill of Rights are considered so fundamental, nearly sacred, that they were spelled out as protections to citizens from encroachment by the federal government. State constitutions likewise protected the rights of citizens from encroachment by state government.

The rights enumerated in the U.S. Bill of Rights are connected by the thread of "natural rights" to Roman times. The concept of "natural rights" assumes that all humans are born with certain rights that cannot be transferred or taken away.

Some of these rights are specified in the Magna Carta in 1215 A.D., the English Bill of Rights in 1689, and the United States Declaration of Independence, Constitution, and Bill of Rights.

In early United States history, lotteries were authorized in some states to raise funds for internal improvements. "The ivy-covered buildings of Harvard, Yale and Princeton were financed in part with a lottery, as were some of the 13 original colonies, and battalions in the Revolutionary and Civil Wars" (*SIRS Series*, Vol. 4, No. 61).

When the Indiana territorial legislature incorporated Vincennes University in 1806, a "\$20,000 lottery was authorized to purchase equipment and to support the institution, while the proceeds from a township of land which the Congress had granted to Indiana in 1804 were expected to provide considerable revenue" (Barnhart and Carmony, 1:271).

The 1816 Constitution of Indiana did not mention gambling or lotteries. A canal at the rapids of the Ohio River at Jeffersonville was also to be financed partially by a lottery. The Indiana General Assembly in 1818 sought to raise \$100,000 by lottery, but only \$2,500 was raised and the project did not materialize (Walsh, 24).

As social reform movements emerged in the 1800s, gambling was seen as a social evil, and lotteries became a target. In 1850, no opposition arose when the lottery prohibition was proposed for the 1851 Indiana Constitution (*Report of Convention 1850*, Vol. 1). The original proposal of October 9 stated “That the Legislature shall be prohibited from granting divorces, and from establishing lotteries” (*Ibid.*, 26). An amendment was offered that stated “No laws authorizing or sanctioning the establishment of lotteries, shall ever be passed” (*Ibid.*, 516).

When reported by the committee, the final amendment became what we recognize as Article 15, Section 8: “No lottery shall be authorized, nor shall the sale of lottery tickets be allowed” (*Journal of Convention 1850*).

After the 1851 Constitution was finalized by the convention, the people of Indiana ratified the new constitution. For 137 years the lottery prohibition stood in Indiana. There were challenges and proposals for change during those years. Not until 1988 did the people of Indiana agree to repeal this prohibition and allow for legal gambling in Indiana.

What does this mean for us today as we discuss the application of freedom to gamble as a citizen of the state? How did this become an issue in the state and continue to be debated today?

What does the law say today?

The 1993 Indiana General Assembly passed legislation to permit riverboat and casino gambling in counties adjacent to the Ohio River and Lake Michigan and on Patoka Lake. The citizens of these areas had to approve the measure by referendum before gambling could occur. Both supporters and opponents of gambling drew battlelines. Gambling consortia lobbied in those areas of the state for the right to operate the riverboats and control the gambling operations. Of the eleven referenda, seven counties voted to allow gambling. How did this come about?

Article 15, Section 8 of the 1851 Indiana Constitution specifically prohibited lotteries and lottery tickets. It was broadly interpreted to prohibit gambling in general. When the article was repealed in November 1988, it became the role of the General Assembly to define allowable gambling through legislation.

Immediately following the removal of the lottery prohibition, the 1989 General Assembly enacted Public Law 341, which was codified as *Indiana Code*, Title 4, Article 30 (Indiana State Lottery), with specific responsibilities for creation of the Indiana State Lottery. Chapter 1, Section 1 addresses that challenge:

The purpose of this article is to establish lottery games in Indiana that are the best available and that enable the people of Indiana to benefit from significant additional money for capital improvements.
As added by Public Law 341-1989(ss), SEC. 1.

That law also established a lottery commission which is accountable to the General Assembly. A Build Indiana fund, administered by the state treasurer, was created to receive deposits of surplus monies

from the lottery; three separate accounts were created, earmarked for “highway construction . . . job creation and economic development . . . and state and local capital projects . . . ” (*Indiana Code 4-30-17-3.5*).

This legislation has not been without controversy. Strong arguments can be made for both sides of the gambling question. With an estimated \$25.8 billion spent by Americans in 1990 on legal gambling, with lotteries garnering \$10.3 billion (*Current News on File*), this is no small consideration.

Yes, the state should allow gambling.

1. People will gamble, so the state should participate in that activity to benefit from the revenues generated.

These monies can be used for internal improvements. Even before lotteries were legalized in the state, people still gambled in church bingo games, raffles, and card games; some people even traveled to cities in other states which had legalized gambling, such as Las Vegas, Nevada, or Atlantic City, New Jersey. State-run lotteries in the U.S. have increased significantly in the past fifteen years. More than twenty states have added lotteries, with estimates that forty-seven states will have a lottery by the end of the century (*SIRS*, Vol. 4, No. 61).

2. The right to buy a lottery ticket is a freedom of choice issue.

If you do not want to gamble, then don't buy a ticket. When gambling was illegal, gambling still occurred. Americans illegally bet an estimated \$100 billion annually on sporting events (*SIRS Series*, Vol. 3, No. 33). If people wish to gamble, legal gambling at least can benefit the state, and it does not harm anyone. People should be free to choose to gamble or not.

3. Gambling is a tax by choice.

Those who wish to play the lottery willingly pay the tax, and tax rates do not have to rise for everyone. A tax of choice is much easier to bear than one imposed unwillingly. This is a way to raise money for the state and only have those who want to play the lottery pay the tax. The revenue funds important projects which benefit the public.

4. Gambling casinos and riverboats create jobs in the area where they are located.

Local people will benefit from the new jobs and industry created in these areas. People will be needed to serve the needs of those who wish to go to these gambling establishments. Economic development—a very powerful argument—predicts hundreds of jobs created and millions of dollars generated from gambling-related business.

The Arguments Pro and Con

Some Pro Positions

No, the state should not allow gambling.

1. Since the 1851 Constitution did not recognize gambling as legal, why should we now?

The prohibition against lotteries had stood for 137 years, so why change? Obviously, the writers of the constitution felt gambling was unnecessary or undesirable.

2. Gambling attracts organized crime.

In 1985, the President's Commission on Organized Crime estimated "that sports betting ranks second to drugs as a source of illegal mob income" (*SIRS Series*, Vol. 3, No. 33). When such large sums of money are involved, mob activity is sure to follow. Just look at the creation of the city of Las Vegas as a mob money-laundering city. Is any other argument necessary?

3. People **are** hurt by gambling.

Those who can least afford it are those who tend to play the lottery. When the poor play the lottery, a larger percent of their income is expended in a game in which one is "eight times more likely to be struck by lightning than to win a million dollar jackpot" (*SIRS Series*, Vol. 4, No. 61). The state should not be involved in promoting an activity that adversely affects the poor who will be using state services and need state care.

Gambling is the most egregious form of regressive taxation. The term taxation is used because lottery receipts represent revenue that would be derived from taxes.

4. Gambling creates low-paying service jobs.

The economic development argument falls far short in the area of job creation. Those jobs which are created require few skills and tend to be of a service nature. To raise the standard of living of the community, we do not need gambling casinos and riverboats to make more low-paying, low-status jobs.

5. The amounts of money derived from gambling are unpredictable.

It is impossible for the state accurately to budget and plan for the use of this money when the total is unknown ahead of time and the flow is undependable.

Bibliography

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- Walsh, Justin E. *The Centennial History of the Indiana General Assembly, 1816-1978*. Indianapolis: Indiana Historical Bureau, 1987.

Some Relevant Court Cases

- *Hudelson v. State*, 94 Ind. 426 (1884).

Hudelson advertised that on a certain day he would give a gold watch to the person buying at least 50 cents worth of goods in his store who came the closest to correctly guessing the number of beans in a glass globe in his window. The Court said this constituted the advertisement of a lottery which was prohibited by statute.

- *Tinder v. Music Operating*, 237 Ind. 33, 142 N.E.2d 610 (1957).

The criminal statute at issue prohibited gambling, but specifically exempted pinball machines, which only gave an immediate right of replay (as opposed to a cash or other reward for successful play). The prosecutor had argued that this exemption violated the Indiana Constitution's prohibition on lotteries. The Supreme Court defined a lottery as "A scheme for the distribution of prizes by lot or chance; esp., a scheme by which one or more prizes are distributed by chance among persons who have paid or promised a consideration for a chance to win them," and identified three elements essential for any activity to constitute a lottery: chance, consideration [a legal term meaning to give something of value], and prize.

In the case of the pinball machines, the element of chance was missing. According to a majority of the justices, "skill is a predominant factor in determining the award of a prize. . . . the conferring of a prize (free play) is improbable unless the player can operate these flippers with a considerable degree of skill."

What Do You Think?

1. Which argument, either pro or con has the most validity? Why?
2. What should be the state's role in the gambling issue?
3. How should state monies gained from the lottery be expended?
4. Why do people gamble? How widespread is gambling in your community?
5. Should the lottery be repealed? Why/why not?
6. Can people become addicted to gambling? What can/should be done to deal with such problems?

Continuing to Explore

1. Is there a difference between sponsoring a lottery and permitting casinos? Why are casinos only allowed on riverboats?
2. What was the outcome of the referendum on riverboat gambling for each of the Lake Michigan, Ohio River, and Patoka Lake counties? How did the citizens of these areas vote on the gambling issue? What were the issues used by both sides?
3. How are state monies from lotteries expended? Has your community benefitted from lottery money? How?
4. What other kinds of lotteries are there, e.g., game hunts, land sales, etc.? What might be benefits from this approach? What might be some negative aspects?
5. How does Indiana's lottery differ from other state lotteries? How is it the same?
6. Should Indiana continue the lottery? Should it be expanded? Why/why not?
7. Is there a relevant distinction between state-sponsored or sanctioned gambling/lotteries and privately run gambling? Should gambling be allowed by non-profit, charitable entities, such as churches, clubs, and Little League teams?

For More Information

- Siegel, Mark A., Ph.D., Alison Landes, B.A., and Carol D. Foster, M.L.S., ed. *Gambling—Crime or Recreation?* Wylie, Texas: Information Plus, 1992.

Contains many charts and tables on all types of gambling and the monies involved. Information on all states and types of games. Contains information about Indiana.

- Weiss, Ann E. *Lotteries: Who Wins, Who Loses?* Hillside, NJ: Enslow Publishers, Inc., 1991.

Very informative and well-documented summary of pros, cons, history, and status of lotteries in the U.S.